

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES LANGONE, as FUND MANAGER)
of the NEW ENGLAND TEAMSTERS AND)
TRUCKING INDUSTRY PENSION FUND)

Plaintiff,)

v.)

STAMPRETE OF RHODE ISLAND, STAMP)
CRETE OF RHODE ISLAND, INC.)
AND STAMPED CONCRETE, INC.)

Defendants,)

C.A. No. 04cv11125 NG

PLAINTIFF'S STATEMENT OF FACTS NOT IN DISPUTE

1. Charles Langone is the Fund Manager of the New England Teamsters and Trucking Industry Pension Fund ("Fund") and is a "fiduciary" within the meaning of Section 502(a)(3) of ERISA. Complaint, ¶3.

2. The Fund is a "multi-employer plan" within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A) and is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). Id.

3. C. Pezza & Son, Inc. ("C.Pezza") was an employer incorporated in Rhode Island with its principal place of business at 100 Irons Avenue, Johnston, RI. Deposition of Leonard A. Pezza ("L.Pezza Depo") Exh. 2. (deposition and exhibits attached at tab 1). C. Pezza was obligated by the terms of one or more collective bargaining agreements, and by the terms of an Agreement and Declaration of Trust, to make contributions to the Fund on behalf of its employees. L.Pezza Depo. p. 24.

4. Leonard Pezza owned C. Pezza along with his wife Constance. He purchased it

from his father in 1984. L. Pezza Depo. p. 6, 12. He was also an employee, director and the only corporate officer of the company until the it went into receivership in 2003. L. Pezza Depo. p. 14, 25; Exh.2.

5. C. Pezza did site excavation and road contracting work. L. Pezza Depo. p. 15.

6. The United States District Court for the District of Massachusetts, C.A. No. 02cv11815 NG, has issued a Judgment against C. Pezza & Sons, Inc. in the amount of \$54,862.42 for failure to make pension contributions to the Fund for the period of February through September of 2002. L. Pezza Depo. Exh. 6.

7. Stamp Crete of Rhode Island, Inc. ("Stamp Crete") was an employer incorporated in Rhode Island with its principal place of business at 100 Irons Avenue, Johnston, RI. L. Pezza Depo Exh. 3. The name "Stamrete of RI" on documents was a misprint. L. Pezza Depo. pg. 47-49.

8. Stamp Crete operated out of the same address and had the same phone number as C. Pezza. L. Pezza Depo. p.16, 48; Exh. 2. It was owned and operated by Leonard Pezza and his two daughters Cheryl and Cynthia. L. Pezza Depo. p. 71.

9. Stamp Crete's stated business purpose was "to purchase cement and process it so as to make concrete, excavate areas where concrete is to be poured, selling and otherwise dealing with concrete related substances." L. Pezza Depo. Exh.3. Stamp Crete did private sidewalks, driveways and pool aprons. L. Pezza Depo. p. 68-69.

10. When C. Pezza lost its workers' compensation insurance in or around May of 2002, the employees of C. Pezza were paid by Stamp Crete. Stamp Crete took over the work of C. Pezza. L. Pezza Depo. p.49-50, 79-80. In 2003, an Amended Annual report was filed for Stamp Crete removing Leonard Pezza's sons and daughters as officers and replacing them with

himself. Deposition of Michael T. Pezza (“M. Pezza Depo.”) Exh. 3. (deposition excerpts and exhibit attached at tab 2).

11. Since C. Pezza employees were being paid by Stamp Crete, the local union requested that Stamp Crete sign a collective bargaining agreement so that benefits could be paid to the employees. Stamp Crete signed a collective bargaining agreement and Agreement and Declaration of Trust. The documents were received by the Fund on March 7, 2003, but dated May 28, 2002. L. Pezza Depo. 49-50; Exh. 7-10.

12. Stamp Crete filed for receivership in 2003, and a permanent receiver was appointed in June of 2004. L. Pezza Depo. p. 49, 66-77. Stamp Crete went into receivership largely because of problems with payroll taxes that were inherited from C. Pezza. L. Pezza Depo. p. 98-101.

13. Defendant Stamped Concrete is an employer with a place of business at 54 Irons Avenue, Johnston, RI. Leonard Pezza was the owner and incorporator of Defendant Stamped Concrete. L. Pezza Depo. p. 106, 110. He held all offices of the corporation when it was formed in 2003. Def. Interrogatory Response 1 (Defendant’s Answers to Interrogatories attached at tab 3); L. Pezza Depo. Exh.4. Leonard Pezza “took over and started it again under Stamped Concrete.” L. Pezza Depo. p. 110.

14. Stamped Concrete operates out of the same address where Stamp Crete was “actually” located. L. Pezza Depo. p. 71-73.

15. Leonard Pezza, Cheryl Greco, Cynthia Mansolillo, and Brian LeClair were all employees of both Stamp Crete and Stamped Concrete. Def. Interrogatory Response 14. A salesman of Stamped Concrete signed and sent back remittance reports for Stamp Crete to the Fund. L. Pezza Depo. pg. 64.

16. Stamped Concrete does the business formerly conducted by Stamp Crete. Def. Interrogatory Response 14. They operate in the same geographic area, Rhode Island and parts of Massachusetts. Stamped Concrete has the same phone number as Stamp Crete because pamphlets and advertisement for home shows were already “made up.” L. Pezza Depo. p. 117-118.

17. Stamped Concrete is operating out of Leonard Pezza’s home. L. Pezza Depo. p. 112.

18. Stamped Concrete’s stated business purpose is “installation of concrete surfaces and selling and otherwise dealing with the concrete and related substances of every type and description.” L. Pezza Depo. Exh. 4. Stamped Concrete does private work installing sidewalks and driveways, but doesn’t do the excavation of the sites. L. Pezza Depo. p. 107-108. Stamped Concrete and Stamp Crete are doing the same business. M. Pezza Depo. p.44.

Dated: March 27, 2006

Respectfully submitted,

For the Plaintiff,
CHARLES LANGONE, FUND MANAGER,
By his Attorney,

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Certificate of Service

I, Renee J. Bushey, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic (NEF).

Dated: March 27, 2006

/S/ Renee J. Bushey
Renee J. Bushey